

P-427, 421/CP-85-652 ORDER GRANTING PARTIAL RECONSIDERATION,
CLARIFYING PRIOR ORDER, SETTING RETURN ON EQUITY, AND REQUIRING
FURTHER FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of a Petition for
Extended Area Service between
Zimmerman and the
Minneapolis/St. Paul
Metropolitan Calling Area

ISSUE DATE: March 9, 1993

DOCKET NO. P-427, 421/CP-85-652

ORDER GRANTING PARTIAL
RECONSIDERATION, CLARIFYING
PRIOR ORDER, SETTING RETURN ON
EQUITY, AND REQUIRING FURTHER
FILINGS

PROCEDURAL HISTORY

On September 10, 1985, subscribers in the Zimmerman exchange, served by Sherburne County Rural Telephone Company (SCRTC or the Company), filed a petition requesting extended area service (EAS) between Zimmerman and the Minneapolis/St. Paul metropolitan calling area (the MCA).

After two contested case proceedings and a change in the EAS statute, traffic studies and proposed rates were filed by the telephone companies involved in this proposed EAS route. The studies were filed between September, 1990, and October, 1991.

On October 16, 1992, the Commission issued its ORDER ACCEPTING COMMENTS, DISAPPROVING NON-RECURRING CHARGES, AND REQUIRING FURTHER FILINGS. Among other things, the Commission required SCRTC to meet with US WEST Communications, Inc. (US WEST) and Bridge Water Telephone Company (Bridge Water) regarding the routing of the Zimmerman/MCA EAS traffic. The Commission also required SCRTC to refile its cost studies using a return on equity (ROE) of 13.25%.

On October 27, 1992, SCRTC filed a petition requesting partial reconsideration of the Commission's October 16, 1992 Order. SCRTC asked the Commission to reconsider two things from the October 16 Order: its determination that any Zimmerman/MCA EAS traffic routed through the Monticello exchange must be carried over Bridge Water facilities; and its requirement that SCRTC use an ROE of 13.25% in its refiled cost studies.

On November 5, 1992, US WEST filed a response to SCRTC's request for reconsideration. No other party responded to SCRTC's filing.

The matter came before the Commission for consideration on February 9, 1993.

FINDINGS AND CONCLUSIONS

I. THE REQUEST FOR PARTIAL RECONSIDERATION

SCRTC has raised issues regarding the implementation of the Zimmerman/MCA EAS route and the proper ROE for SCRTC's EAS cost studies. These issues warrant further development and consideration. The Commission will grant SCRTC's request for partial reconsideration of the Commission's October 16, 1992 Order.

II. ROUTING OF THE ZIMMERMAN/MCA EAS TRAFFIC

History Prior to The Commission's October 16, 1992 Order

SCRTC is the local exchange company (LEC) serving the Zimmerman exchange and the adjoining Big Lake exchange. Bridge Water serves the Monticello exchange, which adjoins the Big Lake exchange. US WEST serves the Elk River exchange, which is part of the MCA, and the Buffalo exchange, which adjoins Monticello. Subscribers in Buffalo have voted for its inclusion in the MCA; the inclusion will be implemented in the future.

Issues arose from an agreement reached between SCRTC and US WEST regarding the routing of Zimmerman/MCA EAS traffic. US WEST and SCRTC agreed that the traffic would be routed two ways. Part of the traffic would travel over SCRTC's facilities in Zimmerman and Big Lake to the Big Lake/Elk River exchange boundary, where it would be passed to US WEST. Another part of the traffic would be routed over SCRTC's facilities in Zimmerman and Big Lake, and across Bridge Water's Monticello exchange to the Monticello/Buffalo exchange boundary, where it would be picked up by US WEST.

The Commission's October 16, 1992 Order

Bridge Water protested the routing of SCRTC's Zimmerman/MCA traffic by means of SCRTC's cable laid across Bridge Water's Monticello exchange. In its October 16, 1992 Order, the Commission agreed with Bridge Water's position. The Commission reasoned that EAS falls within the rule definition of local service; territorial certification is thus necessary for the provision of such service in a local exchange. The Commission ordered SCRTC, US WEST and Bridge Water to meet to determine the

most cost efficient method for routing the Zimmerman/MCA EAS traffic. If the most cost efficient method included routing traffic across the Monticello exchange, SCRTC would be required to carry the traffic over Bridge Water facilities.

Positions of the Parties upon Reconsideration

In its petition for reconsideration, SCRTC noted that under its proposal its facilities would carry EAS traffic across the Monticello exchange, connecting SCRTC's Zimmerman exchange with US WEST's Buffalo exchange. SCRTC argued that its use of its facilities in Monticello must therefore be regarded as interexchange transport. Under Minn. Stat. § 237.17 (1992), interexchange lines and facilities may be extended without a certificate of authority or a territorial certificate. SCRTC concluded that the Commission lacks authority to order SCRTC to obtain a territorial certificate to carry EAS traffic across Bridge Water's Monticello exchange. SCRTC argued further that Bridge Water's territorial certificate to provide local service in Monticello could not act as a bar to others offering interexchange transport across Monticello.

SCRTC stated that the Commission's determination regarding traffic routing in its October 16, 1992 Order would expand the scope of Bridge Water's local exchange monopoly. SCRTC pointed out that the Federal Communications Commission (FCC) has recently been sending out strong signals in the other direction, indicating that many monopoly telecommunications services will be opened to competition.

SCRTC argued that other Minnesota telephone companies have routed EAS traffic through adjoining service territories held by other companies without objection or comment by the Commission. SCRTC concluded that the Commission's position in its October 16, 1992 Order represented a departure from Commission precedent.

Finally, SCRTC alleged that the Commission's statement that EAS is local service, requiring territorial certification, is an improper rulemaking. According to SCRTC, this decision is of general applicability and future effect, and therefore must undergo proper rulemaking procedure.

In its responsive comments, US WEST disagreed that the Commission's routing determination in its October 16, 1992 Order constituted improper rulemaking. US WEST argued, however, that the Commission's decision was an unwarranted departure from Commission practice and precedent.

According to US WEST, other LECs, including Bridge Water, are currently routing EAS traffic across adjoining exchanges without obtaining territorial certification. US WEST urged the Commission to clarify that such a situation is acceptable, as

long as the transporting LEC is not offering service to end users in the exchange being crossed. Only carriers offering local service (including EAS) to the end users within the service territory of another LEC would be required to obtain certificates of territorial authority from the Commission.

Commission Analysis

In its reconsideration of the issues raised regarding the Zimmerman/MCA EAS route, the Commission focused on the certification statute, Minn. Stat. § 237.16. Subdivision 1 of that statute states in relevant part:

No lines or equipment shall be constructed or installed for the purpose of **furnishing local telephone service to the inhabitants or end users in any locality in this state**, where there is then in operation in the locality or territory affected thereby another telephone company already furnishing such service, without first securing from the commission a declaration, after a public hearing, that public convenience requires such proposed telephone lines or equipment...

Emphasis added.

The Commission notes that this statute narrows the necessity for territorial authority or certification to instances in which local service is provided **to inhabitants or end users**. Thus, by inference, if no local service is provided to end users within a local exchange, no certification is necessary. Neither would the certificate of authority held by a local exchange company block the deployment of facilities by another company through the local exchange, **if no service is offered by the other company to the end users within the exchange**.

Applied to the case in hand, this statute indicates that the provision of EAS service by SCRTC through Bridge Water's Monticello exchange does not require territorial certification if the service does not reach end users within Monticello. Since SCRTC is reaching end users within the Zimmerman exchange, local certification is necessary; SCRTC holds such a certificate of authority for service to the Zimmerman exchange.

This interpretation of the certification statute is not in conflict with previous Commission EAS Orders, such as the October 8, 1991 Runestone¹ decision cited in the Commission's October 16,

¹ In the Matter of a Proposal to Introduce Optional Extended Area Service Between Three Exchanges on a Trial Basis, Docket No. P-425/M-91-268, ORDER APPROVING RUNESTONE TELEPHONE ASSOCIATION'S

1992 Order. In Runestone the Commission stated that the telephone company's optional EAS proposal was a local service offering. Under the facts of that case, the EAS routes were between the Elbow Lake and Wendell exchanges and the Elbow Lake and Barret exchanges. In each instance, the service extended from end users in the Elbow Lake exchange to end users in the Wendell or the Barret exchanges. End users were served in each exchange; territorial certification was necessary for service in each exchange.

Upon reconsideration, therefore, the Commission finds that SCRTC need not obtain territorial certification to cross the Bridge Water Monticello exchange, as long as no Monticello end users are served by SCRTC. This determination does not, however, establish that routing Zimmerman/MCA EAS traffic through Monticello, over SCRTC's facilities, provides the most efficient or cost effective results. The Commission will therefore require SCRTC and Bridge Water to file cost studies showing their respective costs to carry the Zimmerman EAS traffic across the Monticello exchange. The Commission will further require SCRTC to file two studies of its total costs for providing EAS to Zimmerman subscribers: one study should include the costs of routing the traffic across the Monticello exchange on SCRTC facilities; the other should include Bridge Water's costs for routing the traffic across the Monticello exchange.

Finally, the Commission notes that it has opened an investigation into existing local transport facilities in Docket No. P-999/CI-93-12. The decisions in this Order are not meant to address the issues raised in that proceeding.

III. RETURN ON EQUITY IN THE COST STUDIES

History Prior to the Commission's October 16, 1992 Order

When SCRTC filed EAS cost figures in October, 1990, it used a 13.5% ROE in its calculations. When SCRTC refiled cost figures in October, 1991, it used a 15.0% ROE. SCRTC noted that its last Jurisdictional Annual Report to the Department of Public Service (the Department) had listed an ROE of 14.09% for 1991. SCRTC also noted that it had not been the subject of subsequent investigation by the Department, and that only companies with ROEs in excess of 15.0% appeared on the Department's investigation list. From these facts, SCRTC inferred that an ROE of 15.0% or below was reasonable and justified.

The Department noted that the economy had taken a downturn since it had adopted a 15.0% ROE benchmark in its investigative

PETITION TO INTRODUCE OPTIONAL EXTENDED AREA SERVICE ON A TRAIL BASIS BETWEEN THREE OF ITS EXCHANGES.

procedures. The Department recommended an ROE of 11.5% for SCRTC, based on discounted cash flow analyses it had performed in other dockets on telephone companies it considered comparable to SCRTC.

The Commission's October 16, 1992 Order

In its October 16, 1992 Order, the Commission rejected the ROEs proposed by SCRTC and the Department. The Commission instead required SCRTC to refile cost figures using a 13.25% ROE. The Commission reasoned that this figure was within the bounds of reasonableness and Commission precedent. The Commission's figure was close to the 13.5% ROE proposed by SCRTC, before it based its ROE on the Department's rate investigation benchmark. The Commission noted that a slight downward adjustment from the originally proposed 13.5% to 13.25% was supported by the downturn in the economy since SCRTC's first cost filing.

Position of SCRTC upon Reconsideration

In its request for reconsideration of the Commission's October 16, 1992 ROE decision, SCRTC protested that the Commission's authorized ROE was unsupported by record evidence. SCRTC also argued that a 13.25% ROE would not leave it income neutral. SCRTC urged the Commission to reconsider its October 16, 1992 Order and authorize a 15.0% ROE for SCRTC. No other party submitted comments regarding this portion of SCRTC's request for reconsideration.

At the February 9, 1993 hearing, SCRTC stated that it would withdraw its request for a 15.0% ROE level if a 14.09% ROE were approved.

Commission Analysis

In May, 1992, SCRTC listed an ROE of 14.09% for 1991 in its Jurisdictional Annual Report to the Department of Public Service. In the February 9, 1993 hearing in this proceeding, the Commission noted its intention of taking official notice of this filed figure, pursuant to Minn. Stat. § 14.60, subd. 4, for purposes of reconsideration of this issue. The Commission offered parties an opportunity to dispute the authenticity of the filed figure.

Upon reconsideration, the Commission finds that SCRTC's ROE should be set at 14.09%.

In considering this issue, the Commission reexamined the possible ROE figures proposed by the parties. Since SCRTC had withdrawn its proposal of a 15.0% ROE, the remaining levels under consideration were the 14.09% filed with the Department by SCRTC in 1991 and the 11.5% ROE figure computed by the Department.

The Commission notes that the Department did not object to SCRTC's 14.09% ROE figure when it was filed for the purposes of a Jurisdictional Annual Report in 1991. Although the Department had the option of investigating the filing, it did not choose to do so.

Upon reconsideration, the Commission is more persuaded by the Company's last filed figure of 14.09% than the Department's estimate of 11.5%. While the Commission agrees with the Department that it is often useful to look forward rather than backward when establishing a proper ROE, the Commission is not persuaded by the Department's proposal in this case. The Department did not perform a cost analysis of the Company in question, did not question the figure filed by the Company in 1991, and submitted a proposed ROE nearly 3 percentage points lower than the Company's latest filed ROE. The 14.09% level submitted by SCRTC is the latest figure filed with reference to this Company's particular circumstances, is most likely to leave the Company income neutral as required by Minn. Stat. § 237.161, subd. 3 (b), and is within the bounds of reason and Commission precedent. The Commission will accept this figure for purposes of EAS cost studies.

The Commission notes that it has reached this decision after an examination of the total circumstances of this case. The Commission's decision is not an indication that it will necessarily accept a company's latest filed ROE level for purposes of setting ROE levels in other proceedings. The Commission also notes that acceptance of a particular ROE for the purposes of EAS cost studies does not necessarily mean that the Commission will approve the same ROE in a company's next general rate case. In each general rate case, the rate of return including ROE must be determined based upon the facts presented at that time.

ORDER

1. SCRTC's request for partial reconsideration is granted.
2. The Commission clarifies its October 16, 1992 Order to indicate that if SCRTC were to carry the Zimmerman EAS traffic across the Monticello exchange, without providing service to Monticello end users, SCRTC would not be providing local service to Monticello subscribers and would not be violating Bridge Water's territorial certificate.
3. SCRTC is required to route the Zimmerman/MCA EAS traffic in the most efficient and cost effective manner possible. Within 20 days of the date of this Order, SCRTC and Bridge Water shall file with the Commission their studies showing

their costs to route the Zimmerman/MCA EAS traffic across the Monticello exchange.

3. Within 30 days of the date of this Order, SCRTC shall file two studies of its total costs for providing EAS to subscribers in Zimmerman. One study should include the costs of routing the traffic across the Monticello exchange on SCRTC facilities; the other study should include Bridge Water's costs for routing the traffic across the Monticello exchange.
4. SCRTC shall refile its cost studies using a return on equity of 14.09%.
5. Within 30 days of the date of this Order, the local exchange companies serving the MCA shall file their cost studies and proposed rates.
6. Within 60 days of the date of this Order, the Department shall file its report.
7. Within 70 days of the date of this Order, interested parties who wish to file comments shall do so.
8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)